



Proposed Regulation Agency Background Document

Agency name	Department of Social Services
Virginia Administrative Code (VAC) citation	22VAC40-35
Regulation title	Virginia Independence Program
Action title	Amend the Virginia Independence Program regulation by updating outdated information and changing the paternity identification requirements.
Date this document prepared	December 12, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The regulation will remove obsolete references to the Aid to Families with Dependent Children (AFDC) program, the Virginia Targeted Jobs Grant (VTJG) Program, and state code citations that were changed during recodification. The regulation will align exemptions from the Virginia Initiative for Employment Not Welfare (VIEW) with those listed in state code. The regulation will also be updated to expand opportunities for hardship exceptions and to allow greater participation in educational activities when participating in community work experience. In addition, this regulatory action will change paternity identification requirements in situations when the applicant for Temporary Assistance for Needy Families (TANF) has provided information on multiple potential putative fathers.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary

Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for operation of all assistance programs. The amendments to the regulations are discretionary changes that will make the regulations more complete and consistent with state law.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The AFDC program was replaced by the TANF program with passage of the Personal Responsibility and Work Opportunity Reconciliation Act. The term AFDC is therefore obsolete and needs to be updated.

The Virginia Targeted Jobs Grant Program has been discontinued by the General Assembly. The references to the program are obsolete and need to be removed.

The pertinent sections of the Virginia State Code regarding the TANF program were recodified. The state code citations in the regulation are out of date and need to be updated.

The exemptions from VIEW are being updated for consistency with state code. While all of the exemptions listed in state code were allowed in practice, they were not all listed in the regulation. Having a complete, comprehensive list will make the regulation more complete and understandable for citizens.

Allowing greater participation in educational activities for those participating in work experience will provide for better long-range outcomes for recipients of TANF.

Former VIEW participants in the period of ineligibility after VIEW participation should have the opportunity to receive additional months of TANF assistance in certain circumstances. This is addressed by expanding the opportunity to request an evaluation for a hardship exception to include requests received from former VIEW participants in the period of ineligibility after VIEW participation, and from individuals who are participating in VIEW and within 60 days of the scheduled closure of their TANF case due to the receipt of 24 months of TANF benefits.

The change to the regulation regarding non-cooperation in establishing paternity was made at the request of the Office of the Attorney General to avoid the potential for litigation. It was determined that the regulation concerning cooperation in establishing paternity was not comprehensive and did not address the situation of a client naming numerous potential putative fathers.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The regulation will be amended by updating state code citations that changed as a result of recodification, removing obsolete references to Aid to Families with Dependent Children (AFDC) and adding references to the current Temporary Assistance for Needy Families (TANF) program, updating the VIEW exemptions and definitions, removing obsolete language concerning the receipt of federal waivers, removing obsolete references to the Virginia Targeted Jobs Grant Program, allowing greater participation in educational activities when a participant is participating in community work experience, expanding opportunities for hardship exceptions, and addressing situations when an applicant for TANF names multiple putative fathers. If an applicant names multiple potential fathers, the applicant will be considered cooperating until five named fathers have been eliminated by genetic testing which will be paid for by the Division of Child Support Enforcement. If the applicant fails to assume full responsibility for any additional genetic testing, it will be considered non-cooperation.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Removal of obsolete language and references (such as AFDC and Virginia Targeted Jobs Grant) will make the regulation easier to understand for both citizens and local department of social services staff.

Revising the VIEW exemptions and definitions will provide a clearer understanding of all individuals who will be required to participate in the VIEW program.

By allowing VIEW participants to participate in educational activities once the participant has met the required 20 hours per week of participation in a core work activity, the regulation will provide the participant the opportunity to improve his/her education and skill level to enhance his/her future employability while concurrently meeting the participation requirements of the VIEW program.

Revising the number of days that the local social services agency has to determine eligibility for diversionary assistance from within 45 days to within 30 days of the date of the receipt of the signed application or within five working days of the receipt of the final verification that substantiates eligibility, whichever occurs first, will allow this policy to match the policy for processing other Temporary Assistance for Needy Families (TANF) applications.

By allowing former VIEW participants in the period of ineligibility after VIEW participation the opportunity to request a hardship exception, the regulation will provide these individuals the same opportunity to receive additional months of TANF assistance as those individuals who request a hardship exception while still participating in the VIEW program (in the 60 days prior to the closure of the TANF case due to receipt of 24 months of TANF benefits). This will establish a uniform guideline for all VIEW participants to be evaluated for a hardship exception regardless of when the request is made – either prior to or after the TANF case closure.

The regulation will allow the client an opportunity to provide a reasonable number (five) of possible fathers in situations when the client does not know the identity of the father to establish paternity and a child support obligation. By establishing uniform guidelines, the client, as well as the local department of social services, can be assured that the same process is applied to each client without variation.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source/fund detail, and (b) a delineation of one-time versus on-going expenditures.</p>	<p>\$0 - There is no economic impact. The proposed changes to this regulation will not increase or decrease the number of families receiving TANF assistance. In addition, neither the processing time nor the time devoted to case management will be affected. As such, there is no fiscal impact to the state.</p>
<p>Projected cost of the regulation on localities.</p>	<p>\$0 - There is no economic impact. The proposed changes to this regulation will not increase or decrease the number of families receiving TANF assistance. In addition, neither the processing time nor the time devoted to case management will be affected. As such, there is no fiscal impact on localities.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation.</p>	<p>The individuals affected by this regulation are applicants for and recipients of TANF. These are low-income families with children.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>The number of families impacted is expected to be negligible.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>\$0 - There is no economic impact. The proposed changes to this regulation will not increase or decrease the number of families receiving TANF assistance. In addition, neither the processing time nor the time devoted to case management will be affected. As such, there is no fiscal impact.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

There is no alternative to having correct and up-to-date code and program citations in the regulation.

Several alternatives have been considered regarding cooperation to establish paternity. The regulation could remain the same, but would be incomplete and would not address situations in which there are multiple potential putative fathers for a child. Consideration was given to allowing the applicant to be considered cooperating until all putative fathers had been eliminated. That approach was rejected as it would adversely affect the opportunity to have paternity established. The proposed policy was chosen as

a reasonable approach that balances the need to establish paternity and to provide a reasonable number of possible fathers to be named.

Consideration was given to maintaining only a partial list of exemptions from VIEW in the regulation, but updating the list provides more information to the public and is more comprehensive.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

These are the least stringent compliance and reporting requirements while still meeting the goals of the regulation. There are no alternate regulatory methods to having the regulation reflect current terminology and code citations. The regulation is being amended to reflect all of the exemptions from VIEW that are in the State Code of Virginia. This regulation should reflect the actual practice of exemption. Assigned hours per week of community work experience hours can be substituted for educational activities during the participant's initial six-month placement in community work experience as long as the participant is engaged in community work experience of at least 20 hours per week. This allows for greater participation in educational activities in the easiest way possible while still meeting federal work participation requirements. If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father. The Division of Child Support Enforcement will provide paternity testing for up to five potential fathers at its expense. After five potential fathers have been tested, the parent must assume full responsibility for any additional testing. If the parent fails or refuses to pay for further paternity testing, this will be considered to be non-cooperation. It is not burdensome for a parent to report the possible fathers of a child, given the benefits of legally establishing paternity.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Department did not receive any comments during the public comment period.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The proposed regulation will strengthen personal responsibility and will lead to the establishment of more paternities. The establishment of paternity is important for families and children. Paternity creates a legal relationship between the father and the child. Paternity establishment is required to make the father legally responsible for paying child support. Paternity establishment may provide legal benefits for a child, such as a share of social security, disability or veterans benefits if the father dies, becomes disabled or is already deceased, rights to any inheritance from the father, and rights to the father’s medical or insurance benefits.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
22 VAC 40-35		References are made to Aid to Families with Dependent Children (AFDC) throughout the chapter. Several state code citations in the regulation are out of date and need to be updated due to recodification.	References to Aid to Families with Dependent Children (AFDC) have been changed to Temporary Assistance for Needy Families (TANF) throughout the chapter. The state code citations in the regulation were updated.
22 VAC 40-35-5		Provisions of this regulation requiring additional federal waivers shall become effective only upon the receipt of such waivers.	This section would be removed as there are no federal waivers for the program at this point.
22 VAC 40-35-10		Lists the terms “AFDC Foster Care”, “Full time unsubsidized employment”, “Job Opportunities and Basic Skills Training Program (JOBS)”, “Job finding”, “Job matching”, “Qualified business employer”, “Qualified employee”, “Qualified employer”, “Qualified participant”, and “Virginia Targeted Jobs Grant.”	The terms are obsolete and have been removed.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		To complete a job search, the participant must search and apply for a set number of jobs.	The participant will no longer have a requirement to complete a set number of job search contacts. The participant must spend a set number of hours searching for employment. The number of hours will be determined/ assigned by the Employment Services Worker/ Case Manager in the local social service agency.
22 VAC 40-35-20		The parent must name all potential persons who may be the father of the child. The parent is considered to be cooperating until all named fathers have been eliminated.	If the parent is unsure of the identity of the father of the child, she is to name all potential persons who may be the father. Paternity testing will be provided for up to five potential fathers at the expense of the Division of Child Support Enforcement. After five potential fathers have been eliminated, the client will assume full responsibility for further paternity testing. If the parent fails or refuses to pay for further paternity testing, this will be considered to be non-cooperation.
22 VAC 40-35-40		Local social service agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 45 days of the receipt of the signed application, whichever occurs first.	Local social service agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 30 days of the receipt of the signed application, whichever occurs first.
22 VAC 40-35-80		Lists exemptions from VIEW that were allowed under previous versions of the State Code of Virginia.	All of the exemptions from VIEW that are in the State Code of Virginia have been added to reflect the actual practice of exemption. The exemptions were revised in 2006/2007 due to the passage of the Deficit Reduction Act of 2005.
22 VAC 40-35- 90		The local department shall provide transitional medical assistance in accordance with the Department of Medical Assistance Services State Plan and regulations.	Transitional medical services are no longer automatically provided as part of the services available for former VIEW participants. These individuals may apply for Medicaid and will be evaluated using the regulations of the Medicaid program in the state of Virginia and the Department of Medical Assistance Services State Plan.
22 VAC 40-35-100		A VIEW participant who does not meet an exemption shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the approved	A VIEW participant who does not meet an exemption shall be required to participate in a work activity. The department shall ensure that participants are assigned to one of the approved employment categories after TANF eligibility determination and entry into the VIEW program.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		<p>employment categories not less than 90 days after AFDC eligibility determination.</p> <p>Only eight hours per week of community work experience hours could be provided for educational activities during the participant's initial six-month placement in community work experience.</p>	<p>Assigned hours per week of community work experience hours can be substituted for educational activities during the participant's initial six-month placement in community work experience as long as the participant is engaged in community work experience of at least 20 hours per week.</p>
<p>22 VAC 40-35-120</p>		<p>In certain circumstances, hardship exceptions may be made to the time limitations for receipt of AFDC benefits. If the participant requests a hardship exception, the local department shall make an evaluation of participation while in VIEW.</p> <p>There are conditions which must be met for the individual to qualify for a hardship exception for up to one year. One of the conditions is the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's two year time limit elapsed was 10% or greater.</p> <p>Extensions of hardship exceptions will be granted in very limited circumstances and only to those persons who demonstrate an extreme hardship. The local</p>	<p>In certain circumstances, hardship exceptions may be made to the time limitations for receipt of TANF benefits. The participant may make a request for a hardship exception during the 60 days prior to the closure of the TANF case due to the receipt of 24 months of TANF benefits or during the period of ineligibility resulting from the receipt of 24 months of TANF benefits. The local department shall make an evaluation of participation while in VIEW as well as the period of ineligibility after VIEW participation.</p> <p>There are conditions which must be met for the individual to qualify for a hardship exception for up to one year. One of the conditions is the unemployment rate in the participant's locality for the two most recent quarters for which data is available from the Virginia Employment Commission prior to the individual's request for a hardship exception was 10% or greater.</p> <p>Extensions of hardship exceptions will be granted in very limited circumstances and only to those persons who demonstrate an extreme hardship. The local department</p>

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
		department shall refer the case to a panel for evaluation of the extension.	shall refer the case to the Commissioner of the Virginia Department of Social Services or designee for evaluation of the extension.
22 VAC 40-35-125 22 VAC 40-35-126 22 VAC 40-35-127 22 VAC 40-35-128 FORMS		These sections address the Virginia Targeted Jobs Grant (VTJG) Program and the procedures for claiming a VTJG and an employer tax credit. The Virginia Employer Tax Credit Application Form is listed.	This section would be removed as the Virginia Targeted Jobs (VTJG) Program has been discontinued by the General Assembly of the state of Virginia and is no longer available. As the VTJG section has been removed, the form is obsolete and has been removed as well.